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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,102	09/26/2003	James A. Donovan	130139	7109
759	90 07/19/2004		EXAM	INER
John S. Munday, Esquire			HOEY, ALISSA L	
Law Offices of .	John S. Munday			· · · · · · · · · · · · · · · · · · ·
PO Box 423			ART UNIT	PAPER NUMBER
Isanti, MN 55040			3765	_

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

		\mathcal{A}
	Application No.	Applicant(s)
	10/672,102	DONOVAN, JAMES A.
Office Action Summary	Examiner	Art Unit
	Alissa L. Hoey	3765
The MAILING DATE of this communication	n appears on the cover sheet w	ith the correspondence address
Period for Reply		
A SHORTENED STATUTORY PERIOD FOR R THE MAILING DATE OF THIS COMMUNICATION - Extensions of time may be available under the provisions of 37 Clafter SIX (6) MONTHS from the mailing date of this communication - If the period for reply specified above is less than thirty (30) days, If NO period for reply is specified above, the maximum statutory properties to reply within the set or extended period for reply will, by any reply received by the Office later than three months after the earned patent term adjustment. See 37 CFR 1.704(b).	ON. FR 1.136(a). In no event, however, may a ron. a reply within the statutory minimum of thinderiod will apply and will expire SIX (6) MON statute, cause the application to become AE	reply be timely filed ty (30) days will be considered timely. ITHS from the mailing date of this communication. BANDONED (35 U.S.C. § 133).
Status		•
1) Responsive to communication(s) filed on	11 May 2004.	
2a) ☐ This action is FINAL . 2b) ☑	This action is non-final.	
3) Since this application is in condition for all	•	•
closed in accordance with the practice und	der <i>Ex parte Quayle</i> , 1935 C.D	. 11, 453 O.G. 213.
Disposition of Claims		
4) Claim(s) 1-20 is/are pending in the application	ation.	
4a) Of the above claim(s) is/are with		
5)⊠ Claim(s) <u>17-20</u> is/are allowed.		
6)⊠ Claim(s) <u>1-16</u> is/are rejected.		
7) Claim(s) is/are objected to.		
8) Claim(s) are subject to restriction a	nd/or election requirement.	
Application Papers		
9)☐ The specification is objected to by the Exa	miner.	
10) The drawing(s) filed on is/are: a)	accepted or b) objected to	by the Examiner.
Applicant may not request that any objection to	the drawing(s) be held in abeyar	nce. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the co	orrection is required if the drawing	(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by th	e Examiner. Note the attached	d Office Action or form PTO-152.
Priority under 35 U.S.C. § 119		
12) ☐ Acknowledgment is made of a claim for for	eign priority under 35 U.S.C. §	119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:		
1. Certified copies of the priority docur	ments have been received.	•
2. Certified copies of the priority docur	ments have been received in A	pplication No
3. Copies of the certified copies of the	priority documents have been	received in this National Stage
application from the International Bu	, , , , , , , , , , , , , , , , , , , ,	
* See the attached detailed Office action for a	a list of the certified copies not	received.
Attachment(s)	·	
Notice of References Cited (PTO-892)		Summary (PTO-413)
 P) Notice of Draftsperson's Patent Drawing Review (PTO-948) D) Information Disclosure Statement(s) (PTO-1449 or PTO/S) 	·	s)/Mail Date nformal Patent Application (PTO-152)
Paper No(s)/Mail Date	6) Other:	

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DETAILED ACTION

Claim Rejections - 35 USC § 103

- 1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 2. Claims 1-3, 5, 6, 9-11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuven (5,850,636) in view of Mitsumatsu et al. (US 2003/0185779).

Reuven provides a heatable outer cap having a water impervious outer surface and sized to fit over the hair of a person (figure 3, identifiers 24, 12 and 14: column 3, lines 51-55). A liner positioned inside the outer cap, having a fiberous texture and being sized to contact the hair of the person (figures 1 and 3, identifiers 10 and 14: column 4, lines 45-67). The cloth liner is made out of a natural or synthetic material (column 3, lines 52-56). There is a heatable gel sandwiched between inner and outer layers of the cap in a flexible container (figure 3, identifiers 22, 24, 30 and 32). The heatable gel along with the rest of the cap is nuked in the microwave to heat the article (column 4, lines 1-11). Further, Reuven provides the heatable gel placed proximate to the middle of the liner to provide heat to the cap.

However, Reuven fails to teach the heat source comprising a frangible container containing a quantity of supercooled liquid capable of releasing a pre-

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determined amount of heat upon crystallization. A quantity of the crystal form of the liquid separated from the supercooled liquid and present in an amount sufficient to initiate crystallization of the quantity of supercooled liquid upon flexing the frangible container to cause the crystals to contact at least a portion of the supercooled liquid. The supercooled liquid is sodium acetate and crystallization cause the temperature of the solidifying liquid to reach a temperature of 130 degrees F.

Mitsumatsu et al. provides a hair cap used with hair compositions such as a conditioner and having a heat source (paragraph 43). The heat source comprising a frangible container containing a quantity of supercooled liquid capable of releasing a pre-determined amount of heat upon crystallization (claims 51, 55, 56 and 60-63). A quantity of the crystal separated from the supercooled liquid and present in an amount sufficient to initiate crystallization of the quantity of supercooled liquid upon flexing the frangible container to cause the crystals to contact at least a portion of the supercooled liquid (claims 60-68). The supercooled liquid is sodium acetate and crystallization cause the temperature of the solidifying liquid to reach a temperature of 130 degrees (paragraph 263).

It would have been obvious to have provided the heatable cap of Reuven with the cap heat source of Mitsumatsu et al., since the disposable cap of Reuven provided with the heat source capable of being activated without any additional means besides a user's hand to break the frangible container makes the cap self sufficient. Having a cap with heat capabilities without using any

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electricity allows the wearer to use to cap in instances where no electricity is available.

3. Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuven and Mitsumatsu et al. as applied to claims 1 and 9 above, and further in view of Kimura (US 4,725,462).

Reuven and Mitsumatsu et al. fail to teach a temperature sensitive portion on the cap to indicate the temperature of the cap after heating. Kimura provides a temperature sensitive indicia (10) to be applied to textile garments indicating the temperature of a garment (column 2, lines 20-55).

It would have been obvious to have provided the heatable cap of Reuven and Mitsumatsu et al. with the temperature sensor of Kimura, since the heatable cap of Reuven and Mitsumatsu et al. having a temperature sensor would allow the user to know when the temperature of the cap goes from pre-heated to heated so it can then be donned on the user's head.

4. Claims 7, 8, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuven and Mitsumatsu et al. as applied to claims 1 and 9 above, and further in view of Skiba et al. (US 6,047,706).

Reuven and Mitsumatsu et al. fail to teach the liner including a quantity of hair cleaning compound consisting of a conditioner (column 3, lines 13-17).

It would have been obvious to have provided the heatable cap of Reuven and Mitsumatsu et al. with the cleaning compound on the liner of Skiba et al., since the cap of Reuven and Mitsumatsu et al. having the conditioner compound

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located on the liner provides a cap with all the supplies needed to deep condition a user's hair without having to buy or use anything additional.

Allowable Subject Matter

5. Claims 17-20 are allowed.

Response to Arguments

6. Applicant's arguments with respect to claims 1-16 have been considered but are most in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alissa L. Hoey
Patent Examiner

Technology Center 3700